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## AN EXPLORATION OF THE LAW, RULES, AND CASES IN INDIA FOR THE DISABLED AT WORKPLACE

KHUSHI KERUR

KUSH KHANDELWAL

SYMBIOSIS LAW SCHOOL HYDERABAD

### ABSTRACT TO THE PAPER

The society has always shunned away people with disabilities. Nonetheless, a handful of companies have undertaken the initiative to *Employ, Enable, Engage and Empower* the disabled through job creation. While a major job generator being the retail sector, the corporate sector has not been far behind. Companies like Accenture, Uber, IBM, Ernst & Young have played a pivotal role in creating an inclusive workspace. Earlier this decade a major issue faced was the lack of recognition of the disabled and the backing of any legislative provisions safeguarding their rights and empowering them.

The Disabled have constantly fought for their basic human rights which on paper have been provided by statutes and convention that have been either passed or ratified with full majority. But the implementation of these provisions has been disregarded for long time now. The persons with various kinds of disabilities constitute a major chunk amounting to 21 million people and unemployment in such amount compromises the GDP and output of the country.<sup>1</sup> With the enactment of the Right of Persons with Disabilities Act and the numerous surveys undertaken by governmental and non-governmental organisations, an analysis and evaluation of the progress with respect to the same seemed essential therefore necessitating this research project.

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<sup>1</sup> Office of the Registrar General & Census Commissioner, “*Statistics on Disabled People, Census*”, (Government of India, 2011).

The significance of this study lies in the emphasis on a socially inclusive society and the progressive steps taken towards achieving the same. A major problem faced by PwD is the lack of job opportunities and the requisite training required to secure a stable livelihood. As research suggests, the labour market keeps away from employing the disabled. For economic purposes, most of the opportunities are only granted to the highly educated disabled people, whereas everybody else are left out of the economy.<sup>2</sup> This study aims at studying the efforts taken by organisation towards empowerment and achievement of equity. In addition to this, an analysis of the legal system and the landmark decisions taken by the Indian judiciary shall be analysed, to mark the importance of their contribution as well.

**KEYWORDS: Person with Disability (PwD), Fundamental Rights, Employment, National Policy, Right to Equality.**

## INTRODUCTION

*“Persons with disabilities present business and industry with unique opportunities in labour-force diversity and corporate culture, and they’re a large consumer market eager to know which businesses authentically support their goals and dreams. Leading companies are accelerating disability inclusion as the next frontier of corporate social responsibility and mission-driven investing.”<sup>3</sup>*

*-Ted Kennedy, Jr.,*

*Disabilities Rights Attorney,*

*Connecticut State Senator and Board Chair,*

*American Association of People with Disabilities*

Disability, either physical or mental has always been a taboo in India. Ranging from the shame of consulting a psychiatrist to the mortification of undergoing rehabilitation, it has always been a closed-door matter. But as time has evolved, it is high time that the obvious situation and plight of people be addressed without any interference.

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<sup>2</sup> Pooja Singh, “Persons with Disabilities and Economic Inequalities in India”, Vol. 44 Indian Anthropologist, 65 (2014).

<sup>3</sup> A statement by Ted Kennedy Jr, Getting to Equal, the Disability Inclusion Advantage, AAPD and Accenture, 2018.

India being a welfare country has equality, justice and freedom enshrined in the Preamble of the Constitution, and such Constitutional guarantees are definite regardless of the age, gender, sex, race or class. Undoubtedly the achievement of these principles so enshrined are questionable in the present day and age, although measures for betterment have been undertaken the scope is broadly limited to the general class of majority. Presently, 'Persons with Disability' is one such class in our society which faces discrimination, surprisingly surpassing the existent gender constructs.

On a global scale the rights of disabled have been recognised through the United Nations Convention on the Rights of Persons with Disabilities, which has been effective since 2008. Article 27 of the Convention provides for State Parties to ensure promotion and incorporation of disabled people in the workforce in a non-discriminatory manner. This established the regime of an all-inclusive work environment, which has been further recognised by the Indian Courts.<sup>4</sup> Yet, studies have shown that a majority of already existing employment for this section of people is restricted to low paying or low occupational ranks present in the organization.<sup>5</sup>

With specific national legislations acting in place, and the international covenants, there has been a wider scope for opportunities in the public as well as private sector. A majority of companies across the world are trying to hire Persons with Disabilities (hereinafter called PwD) as a part of their Corporate Social Responsibility. The present 500 billion USD retail sector in India is all set to cross 1.3 trillion USD, thereby creating a plethora of favourable job opportunities for PwD.<sup>6</sup>

*“Leading companies are accelerating disability inclusion as the next frontier of corporate social responsibility and mission-driven investing.”*

It is the responsibility of all the people in the world to create a safe space for accommodating the people in work environments. In a general survey conducted in private capacity, it was found that only 37% of the managers are aware of the existing policies for the disabled in their organization.<sup>7</sup> It is recorded that, those companies which are under a statutory obligation to employ disabled actually employ more than those companies without such obligations. While,

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<sup>4</sup> Peoples Union for Civil Liberties v. Union of India, AIR 1997 SC 568

<sup>5</sup> World Economic Forum, “The Future of Jobs Report” 45 (October, 2020)

<sup>6</sup> Consumer Leads, FICCI-Deloitte Report, October, 2018.

<sup>7</sup> Harold Russell, “People Who are Disabled and Employment”, 132 *American Annals of the Deaf* 317 (1987)

it is a major misconception that employing the disabled might incur the company excess costs and losses, it might be surprising to note that NIL or very little losses are actually incurred.<sup>8</sup>

The inequal distribution of resources and opportunities between the various social groups have left the disabled as the most vulnerable section of the society to fend for themselves without access to quality education or health facilities or employment provisions.<sup>9</sup> In light of the same, the legislative provisions and the judicial rulings for the betterment of PwD shall be explored. Additionally, the practical aspects of employment and initiatives taken by various companies shall be elaborated upon.

## RESEARCH PROBLEM

The community of disabled persons has been overshadowed and overlooked for in the society. In light of the same, an examination of the law, rules and cases in India with respect to the Disabled people.

## OBJECTIVE OF STUDY

1. To evaluate the status of the disabled in Indian society
2. To enumerate the legal provisions existing for PwD.
3. To analyse the initiatives taken by the retail and corporate sector.
4. To disseminate the statistical information as released by various organisations
5. To suggest any reforms in the existing systems

## METHODOLOGY

### SCOPE

The scope of this research is limited to the geographical boundaries of India. Within this scope it shall tackle all the hypothesis selected with respect to the research problem. Though this project the following shall be addressed:

1. The practical reality of persons with disabilities
2. The legal provisions in their favour
3. The undertakings of businesses for the empowerment of PwD
4. An analysis of the adherence to international standards

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<sup>8</sup> Rafael Lalive, Et al. "Do Financial Incentives Affect the Firms' Demand for Disabled Workers", 11 *Journal of the European Economic Association* 25 (2013)

<sup>9</sup> Joseph E. Stiglitz, *The Price of Inequality*, (W.W. Norton & Company, New York, 1<sup>st</sup> Ed. 2013).

## SOURCES OF DATA COLLECTION

The entire project shall be based on the data collected from secondary sources. A major statistical evidence is the study conducted by the Human Development Unit of the World bank, the report published by the National Statistical Office under the wing of Ministry of Statistics and Programme Implementation in 2018. These shall be used as aids in addition to the data collected during the National Census of 2001 and 2011.

## DATA ANALYSIS

A mix of qualitative and quantitative analysis shall be undertaken through all the secondary data collected. A narrative analysis of the experiences and views of the employees in these sectors as collected through interviews shall be reflected upon for an in-depth analysis. All the communication shall be read with respect to the social context. The data obtained has been semi-structured as it has been undertaken in the working environment of the respondents.

## LITERATURE REVIEW

*(Organization, 2011)<sup>10</sup>*: This World Report on Disability was published in 2011 by the World Health Organization in association with the World Bank. It tackles the various aspects of disability, starting from the definition to the statistics and analysis of country wise existence of disability and the awareness around the same. This report specifically enlightens the work and employment scenario internationally and offers solutions as to development of the status of the disabled in the world by providing them with employment.

*(Singh, 2014)<sup>11</sup>*: With 21% of Indian population suffering from some type of disability, this entire community has been side-lined in the process of globalisation. The economic benefits and guarantees that this community has been entitled to have never been actually given to them. This paper undertook a in-depth analysis of the relation between the gender roles, the opportunities and development of the disabled class of the society.

*(Bartlett, 2012)<sup>12</sup>*: The United Nations Convention on the Rights of Persons with Disabilities that was formulated in 2006 and finally enacted in 2008 which has bought in significant consideration on the Mental health situation across the globe, this convention was compared

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<sup>10</sup> *Supra* Note 10

<sup>11</sup> *Supra* Note 2

<sup>12</sup> Peter Bartlett, "The United Nations Convention on the Rights of Persons with Disabilities and Mental Health Law" 75 *The Modern Law Review* (2012)

and reconsidered with respect to the Mental Capacity Act, 2005 and the lacunas in criminal justice system with respect to the same.

*(Jagdish & Gowda, 2019)<sup>13</sup>*: This review of the Mental Healthcare Act, 2017, brings to light the pros and cons of the act with comparison to the International standards set by the United Nations Convention on the Rights of Persons with Disabilities. The various bold steps as suggested by the act have been appreciated, like decriminalising suicide, recognition of mental illnesses and provisions for treatment. The role and relation of the Act with the Article 377 of the Indian Constitution was also looked into by the authors.

*(Mehrotra, February, 2011)<sup>14</sup>*: the author if this paper undertook efforts to create a timeline of the disability movement in India, starting from the late 1970's to the present day scenario until the year 2011. The passing of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was majorly criticized as a move only undertake under international pressure, with bare minimal implementation in the country.

In light of the above resources and the various other resources used by the author, this paper shall enlist and enumerate the Indian position and recognition of the Disabilities and the employment scenario of PwD's in India.

## WHO ARE PwDs?

Disabilities is an umbrella term, covering impairments, activity limitations, and participation restrictions which limit the ability of humans to carry out tasks. An impairment is a setback in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations.<sup>15</sup> Disability as a concept has been divided into Models based on the impairment, which broadly are the Social Model and the Medical Model. Medically, it is considered to be the bodily impairment to do a certain task which needs treatment for recovery. The medical perspective has been criticised as it has been observed that it promotes social, economic and political inequalities in the society along with the increase in

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<sup>13</sup> A. Jagadish Et Al., "Mental Healthcare Act 2017 - The way ahead: Opportunities and Challenges" 41 *Indian Journal for Psychological Medicine* (2019).

<sup>14</sup> Nilika Mehrotra, "Disability Rights Movements in India: Politics and Practice.", 46 *Economic and Political Weekly* 69 (2011)

<sup>15</sup> *Supra* Note 10

stigmas and taboos.<sup>16</sup> This mainly focuses on a form of functional limitation that is faced by a person. The main focus here is to cure the person, which fundamentally seems to a flawed concept, since disability not in all forms is curable or treatable. Therefore, emphasis on the training and rehabilitation of the person, to increase independence has been considered a viable solution.

As the historical texts suggests, people with disability have constantly been undermined and marginalized by the dominant cultural values of exclusion.<sup>17</sup> The other perspective being the social in-acceptance and exclusion of people with disabilities. The cultural values and beliefs promote such narrow ideology amongst people.<sup>18</sup> The foremost argument is that the community fuels the perception of limited inclusion due to physical or social barriers. The root of this model has been found to be in the practice of alienation of the disabled minority, while the logical deduction is “a well-developed and rounded society would not have any cavity for disability to exist.

While both the perspective has been fought for and against, it is most likely that a balanced view of both the situations be adopted in order to understand that disabilities arise from the medical conditions. In India, disability is not limited to the physical lack or inability to perform certain day to day tasks, but is wider in the sense that there is a struggle for basic daily survival and awareness in the society. With the start of the Disability Rights movement, the focus was mainly divergent and distant from the present requirements of the persons. It was a wide term which covered everyone, including those people stuck within the social constraints as the oppressed class. The movement in itself saw division on various levels, based on type of impairment, gender classification, urban-rural disparity and many other micro-factors playing their part.

Another ignored fact that was revealed by the World Bank is the inevitable linkage between gender and disability even amongst the disabled. But the stigma around disability comes from the illiteracy, low levels of awareness and extortionate costs of health care.<sup>19</sup> The World Bank also went on to comment on the fact that the actual statistics of disability in India could be higher than what was indicated by the Census.

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<sup>16</sup> Jeanne Hayes & M Harrold, “The Road to Empowerment: A Historical Perspective on the Medicalization of Disability” 30 *Journal of Health and Human Services Administration* 355 (2007)

<sup>17</sup> Iris Marion Young, *Justice and Politics of Difference*, (Princeton University Press, New Jersey 11<sup>th</sup> Ed, 2011)

<sup>18</sup> *Supra* Note 2

<sup>19</sup> *Supra* Note 14.

The purpose of the enactment of such Convention and National Legislation is to promote, protect and preserve the rights and basic human rights of the people who are differently abled. The fundamental human rights and guarantees that they are entitled to should be provided to them without any hindrance or compromise to their respect and dignity. The Rights of the Disabled Persons Act, 2016 (hereinafter referred to as RPwD, 2016)<sup>20</sup> under §2(s) defines a person with disability as

*“anyone with a long-term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.”*

In light of the same, it is pertinent to associate the same with the bracket of inclusion as mentioned in the UN convention which is as follows:

*Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.<sup>21</sup>*

The common point in both the above-mentioned provisions is the effect of impairment being directly related to their ability to participate in the society. Additionally, emphasis has been provided on the impairment being long-term, which undermines the rights of certain other persons because the main areas of application is for people with Mental illnesses. The duration of a minimum 2 years and beyond is required, for preliminary consideration of any form of mental illness.<sup>22</sup>

## **CONSTITUTIONAL PROVISIONS FOR THE DIFFERENTLY ABLED.**

The Preamble of the Indian Constitution secured equal rights for all the citizens without any discrimination which includes the differently abled as well. There are no specific constitutional provisions enacted under the name of the disabled, but any and every provision contained in the Constitution is equally applicable to the disabled as well. The Golden triangle of the Constitution i.e., Article 14, 19 and 21 guarantee the right to equality, various freedoms,

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<sup>20</sup> The Rights of the Disabled Persons Act, 2016 (Act No. 49 of 2016)

<sup>21</sup> United Nations Convention on the Rights of Persons with Disabilities, 2007 Art. 1

<sup>22</sup> Government of India, “First Country Report on the Status of Disability in India” (Ministry of Social Justice and Empowerment, 2015).



including the freedom to trade, business and employment, along with right to life to the differently abled. Further, the guarantees under Art. 14 to 18 which abolish any form of untouchability are also applicable, which lay a blanket ban on any form of discrimination levied against people with any form of disabilities. Alongside all the rights, education and employment play a major role in ensuring that the

## **THE RIGHT OF PERSONS WITH DISABILITIES ACT, 2016**

This Act passed in the year 2016, enabled the recognition of 21 forms and types of disabilities as against the existing 7 in the act of 1995. This act has categorised disability as an ever-evolving and dynamic concept. The act introduced the concept of benchmark disability, where a minimum of 40% disability was considered. While a benchmark has been laid, it has also been recognized by the courts that in cases, when the matter relates to differently abled persons, the courts have to be vigilant and liberal in their approach, thereby respecting the rights guaranteed to everyone.<sup>23</sup> The Act also clarifies that differentiation between “Person with Disability” and “Person with Benchmark Disability”, this helps in rendering justice to people on a case-to-case basis, which has been put into effect through various judgements.<sup>24</sup>

The government has been bestowed with the responsibility of making sure they have all their rights that they are entitled too. This includes the employment, education, accessibility to public spaces, and various reservations and allowances. The principle of “*Reasonable Accommodation*” has been followed in making decision with regards to rights and guarantees, which enables the creation of an environment that helps overcome the barriers through realization of the rights.

## **NATIONAL POLICY FOR PERSONS WITH DISABILITIES, 2006<sup>25</sup>**

This policy has been in place from time before the UN Convention was ratified by India, and the foundation of this policy lies in inclusion, freedom, justice, and equality. The policy essentially worked in the ensuring that adequate support is provided to anyone who has some disability, or if there is suspicion of the development of the same. The rights and guarantees of the differently abled were specifically outlined for better understanding and implementation.

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<sup>23</sup> Justice Sunanda Bhandare Foundation v. Union of India, (2018) 2 SCC 397

<sup>24</sup> Vikash Kumar v. Union Public Service Commission & Ors., (2021) 5 SCC 370

<sup>25</sup> Government of India, “The National Policy for Persons with Disabilities” (Ministry of Social Justice and Empowerment, 2006).

The policy also contained specific provisions protecting the right to employment and self-employment of the differently abled, in both public and private sector.

With specific reference to the private sector, the policy laid down various measures to incentivise the working environment including awards, tax rewards and exemptions, Provident fund, employee benefits, etc.

## **REHABILITATION COUNCIL OF INDIA ACT, 1992**

Under the wing of this Act, the Rehabilitation Council of India (hereinafter referred to as RCI) was recognised as a statutory body, which took up the responsibility of ensuring that the legislations in place, in India were in conformity with the UN Convention. Further, the principle of “Reasonable Accommodation” was implemented by RCI, along with various other regulatory/training activities of Rehabilitation professionals. The main aim of the Act was to ensure rehabilitation of the PwD, which was regularly monitored and regulated by the RCI, with special emphasis on fostering the suitable environment for development.

## **JAMMU AND KASHMIR PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1998.**

This act was being reconsidered through the Jammu and Kashmir Rights of Persons with Disabilities Bill, 2018. But since the abrogation of Art. 370 that provided for the special status to the state of Jammu and Kashmir, all the laws applicable in the state of India have been made applicable in the entire country. Notably, the erstwhile bill envisaged to recognise 14 new categories of disabilities, and ensured that the incentives provided in the private sector to the employees is not less than 5%.<sup>26</sup> The bill also aims at providing health, rehabilitation and educational benefits. The bill also aimed at re-evaluating all the general schemes and provisions, to make sure the disabled are being included in every scheme and to redo those schemes that are outdated and not in the favour of the differently abled people.<sup>27</sup>

## **MENTAL HEALTH CARE ACT, 2017**

In furtherance of the United Nations Convention on the Rights of Persons with Disabilities, 2006 this act was passed in order to make sure that the accessibility and the recognition for the

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<sup>26</sup> Editorial, “J&K approves bill for welfare of persons with disabilities”. *Business Standard*, 23<sup>rd</sup> November, 2018 available at [https://www.business-standard.com/article/pti-stories/j-k-govt-approves-bill-for-welfare-of-persons-with-disabilities-118112300365\\_1.html](https://www.business-standard.com/article/pti-stories/j-k-govt-approves-bill-for-welfare-of-persons-with-disabilities-118112300365_1.html) (27th August, 2021).

<sup>27</sup> *Ibid.*

disabled by the way of some mental illness are not ignored in the country. A major reason for the under-development of this Act is because of the stigma attached to the mental illnesses. The Act recognises the rights of every individual to live with dignity and protection from inhumane treatment, amongst other notable rights. To strengthen the existing provisions, the National Mental Health Programme has been launched, which has seen significant contribution especially in the times of COVID- 19 Pandemic.<sup>28</sup>

## **UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, 2006.**

This convention was brought in to curb the various inequalities and discrimination that the differently abled have to suffer on a day-to-day basis. The countries that ratify the convention take a step towards combating stereotypes and prejudices and promote awareness about the capabilities of persons who are disabled.

The impetus for the Convention was that, whatever the intent of previous human rights treaties, people with disabilities had not shared equally in the rights created by those treaties. For people with mental disabilities, this would be an extraordinary change. It is not merely that some previous international instruments must be taken as superseded.<sup>29</sup>

Article 27 provides for work and employment, while there have long been formal requirements to make reasonable adjustments to conditions of employment to take into account the needs of persons with mental disabilities, academic and jurisprudential analysis of what is actually required remains scant.<sup>30</sup> This Article has been incorporated in the Indian Constitution under Art. 39, 41 and 42, thereby securing adequate livelihood, provisions for right to work and humane conditions for work.

## **CASE ANALYSIS**

### ***CASE 1: UNION OF INDIA V. NATIONAL FEDERATION OF THE BLIND***

#### **FACTS:**

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<sup>28</sup> Annual Report, 2020-21, Department of Health & Family Welfare Ministry of Health & Family Welfare Government of India,

<sup>29</sup> Janet D. Lord, Et Al, "Lessons From The Experience Of U.N. Convention On The Rights Of Persons With Disabilities: Addressing The Democratic Deficit In Global Health Governance" *Journal of Law, Medicine and Ethics* (2010).

<sup>30</sup> *Supra* Note 12.

The respondents i.e. National Federation of the Blind move the Supreme Court of India by the way of a Writ Petition, seeking the implementation of §33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995<sup>31</sup> which provided for the reservation up to 1% of the 3% of all the government jobs for people with blindness, low vision, hearing impairment, locomotor disability or cerebral palsy.<sup>32</sup> The lack of fair opportunities led to the filing of this case on appeal to the Supreme Court of India.

#### ISSUES:

1. Exclusion of blind people from recruitment for government jobs
2. Improper implementation of the reservation policy for the disabled
3. Lack of employment opportunities for the blind and disabled
4. Interpretation of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

#### ANALYSIS:

The main contention was with respect to lack of reserved opportunities for the disabled, even though it has been provided for by the statutes. The precedents' set by various courts i.e., *Indra Sawhney v. Union of India*<sup>33</sup> and *R.K Sabharwal v. State of Punjab*<sup>34</sup> also seem to be inapplicable in the present case owing to the difference in the basis of the differentiation. All the precedented cases pertain to vertical segregation based on caste and religion, whereas the present case pertains to horizontal segregation amongst people with physical separations. §33 read with §38 and §39, clarifies the intent of the legislature to ensure 3% of all the government jobs for the disabled, out of which 1% shall be exclusively reserved for the blind/ low vision/locomotor disability/cerebral palsy.

Since this clarifies the legislative intent, in light of the rule of beneficial construction, it has been interpreted in order to fully construe all the benefits to the class so concerned. In no way has the legislature intended to confer the departments with unequivocal powers which allow them to exclude a certain class of people who have been entitled to such reservation by statute. The court also clarified that providing adequate employment opportunities is the gateway to ensuring empowerment of people with disabilities.

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<sup>31</sup> Act No. 1 of 1995

<sup>32</sup> §33, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

<sup>33</sup> AIR 1993 SC 477

<sup>34</sup> (1995).2 SCC 745

## CONCLUSION:

The Apex court held that the appropriate body undertake measures to calculate the total number of posts and the corresponding vacancies in such departments based on which the posts for disabled be decided. Such orders were to be implemented within a period of 3 months of the passing of the judgement.

All the Public undertakings were instructed by the court that in case of any non-observance of the reservation schemes they shall be held for the non-compliance of the orders and may be proceeded against by the department itself.

## ***CASE:2: GOVERNMENT OF INDIA V. RAVI PRAKASH GUPTA<sup>35</sup>***

FACTS: The respondent being a visually handicapped person attempted the Civil Services Examination and bagged the fifth position. The person on a rank above him was given the job on merit basis. The respondent contested this through a Special Leave Petition, that there has been a constant backlog in the appointment of disabled people in the government jobs since the year 1996. Given his rank, he deserved a job in the government sector. The government contended that there were no vacancies, given that the provision for reservation was first made in 2005 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

## ISSUES:

1. Ambiguity in reservation of posts and identification of posts.
2. Whether the backlog of vacancies can be considered and a carry forward of vacancies can be allowed

## ANALYSIS:

This suit was first filed by the way of a writ petition in the High Court of Delhi which was withdrawn and transferred to the Central Administrative Tribunal, which had the proper jurisdiction to entertain the suit. The respondent contested that the act came into being in the year 1995, and it has statutorily provided for 3% reservation for various types of disabled persons. Therefore, it was contended that the appointment for full capacity had never taken place which provides for scope for carry forward of appointments. Taking into consideration the same, the High Court found a clear vacancy where the respondent could be appointed and ordered the department to provide a appointment letter within six weeks of the passing of the

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<sup>35</sup> (2010) 7 SCC 626

judgement. In the case of National Federation of Blind v. UPSC<sup>36</sup> it was held that blind and partially blind persons are eligible to the government jobs and posts.

#### CONCLUSION:

The Court held that the judgement passed by the Delhi High Court was right and therefore the Respondent in this said case was allotted a job with the order said to be effected within 8 weeks from the date of the judgement. In addition to this, the court also ordered for the costs to be paid worth Rs. 20,000.

#### ***CASE:3 SYED BASHIR-UD-DIN QADRI V. NAZIR AHMED SHAH<sup>37</sup>***

#### FACTS:

The appellant was chosen to be appointed as teacher i.e. *Rehbar-e-Taleem*, and was the topper on the merit list. This was without any special reservation made for the disabled. The respondents contested the appointment on the basis that the person was suffering from Cerebral Palsy. The Respondent was 4<sup>th</sup> in the merit list, and asked for his appointment due to lack of any disability. Taking this contention into consideration, the High Court set up a committee, which said that the appellant could read, talk and teach well but faced difficulty in writing. The High Court revoked the appointment, and provided for post as library bearer or the lab assistant. The appellant, approached the Court by the way of a Special Leave Petition, questioning the orders passed by the High Court.

#### ISSUES:

1. Whether the court was right in revoking the job application
2. Whether this act was violative of §22 of Jammu and Kashmir Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998.
3. Whether the legislative intent of providing employment to the disabled has been digressed.

#### ANALYSIS:

Cerebral Palsy is a disorder that affects the bodily movement, the muscle structure or posture. It is caused due to underdevelopment of the brain. It has no where been proved that people suffering from Cerebral Palsy are unfit to occupy teaching positions. It is well accepted that his movement could be unstable and speech could be difficult to interpret. The students were asked

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<sup>36</sup> (1993) 2 SCC 411

<sup>37</sup> (2010) 3 SCC 603

about their experience with the teacher they said that they faced no difficulty in understanding the teaching of the appellant.

When enquired with the school authorities, they certified *bonafide* behaviour on the part of the appellant and that the results achieved in the classes being taught was exceptionally satisfactory. The speech defect was found to be a result of the pressure situation of the interview. The approach and logic as adopted by the courts was considered to be violative of the Act and of basic Human Rights principles.

The example of Stephen Hawking was taken as a benchmark of how cerebral Palsy does not hinder the teaching or understanding abilities of a person. Such educational institutions are instrumentalities of the state and therefore such cases should be dealt with utmost level of sensitivity and empathy.

The act provides for actions to be taken by the government in order to provide for the persons suffering from disabilities.

#### CONCLUSION:

The Apex Court held that, the actions taken so far were violative of the basic human rights principles and directed the reinstatement of the appellant to the position so appointed in before. The disengagement of the appellant has been a grave wrong and the service should be continued with all the notional benefits promised.

#### ***CASE:4 BHAGWAN DASS v. PUNJAB STATE ELECTRICITY BOARD***<sup>38</sup>

#### FACTS:

The appellant being an employee in the State Electricity Board, met with an unfortunate accident rendering him completely blind in the year 1994. ON account of non-appearance for work for a period of 3 years, he was issued a charge-sheet under his name. In furtherance to this, the appellant applied for retirement and prayed that his wife be allotted a suitable job in the department. But he later on got to know that he is entitled to keep his job in pursuance of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and withdrew his application. Due to lack of job, the family was in a miserable condition but the department paid no heed to this misery of the appellant.

#### ISSUES:

1. Whether the removal from duty was justified

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<sup>38</sup> (2008) 1 SCC 579



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2. Whether the appellant is entitled to the protection under the act
3. Whether the denial of rights is violative of the constitutional provisions

## ANALYSIS:

The removal of the appellant from the job shows the apathy and insensitivity that all the people show towards the differently abled class of the society. Statutorily, the appellant is entitled to keep the job and continue working as per normal. But due to the unawareness of his rights, he put forth a resignation letter to the board and later withdrew it on knowing about his rights.

The act under §47 provides that if a person acquires any kind of disability during the course of employment, such person shall not be denied his job or any promotional opportunities in the future. The contention on behalf of the electricity board was that, the appellant himself had forwarded the resignation letter, and therefore he is bound to leave the service on account of his disability.

## CONCLUSION:

The court held that such removal from employment should be considered as wrongful termination and not voluntary retirement. The court held that the appellant be reinstated into service and all the consequential benefits be duly given. The disabled are equal citizens of the country and therefore they are entitled to all the benefits of the statutes so enacted.



## CHAPTER: 4

A survey conducted by the National Centre for Promotion of Employment for Disabled People revealed that out of all the respondent companies, the range of differently abled employees was between a disappoint 0.01% to 0.09% only.<sup>39</sup> Over 2% of Indians are differently abled, and 80% of them are unemployed and only 23% are counted as salaried employees. While this is a survey that was conducted many years ago, the responding companies include few of the most prominent companies of the present day. The numbers presently have not seen an enormous increase, yet, various corporates have undertaken the Mission of being inclusive in their employment approach.

Corporate giants like Uber and Accenture have played their part in employing people who are differently abled. Uber with an aim to diversify their employee's diversity and to include those people suffering from physical, mental and emotional disabilities. Uber has been constantly putting in efforts to ensure equal opportunity for people with disabilities to consider joining Uber. Develop new resources and increase awareness of existing benefits for current and new employees who might have a disability.<sup>40</sup> Since Uber on field needs physically fit and fine people, therefore, disabled people are being employed in the service centre, in the technological development sites and in the 24/7 helpline facilities.

Accenture in abiding by the United Nations guidelines identifies around 60 types of disabilities and in pursuance to this, has employed 23,000 differently abled people in India. It has also launched a new skill development internship period for the disabled, who can hone their skills. The motto that they have been following is of the 4E's "Employ, Enable, Engage and Empower" which has enabled them to have a favourable position at the Disability Equality Index.<sup>41</sup> The Landmark Group has been one of the major employment providers for the differently abled people. From various shopping avenues to the chain of restaurants, people are being trained separately for the jobs and then placed around the country. With 400 stores and over 19,000 employees, they have hired more than 500 differently abled people. The main jobs that they have secured include that of cashiers and roles in packing and stacking.

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<sup>39</sup> National Centre for Promotion of Employment for Disabled People, "Employment Practices of the Corporate Sector", Available at: <https://ncpedp.org/employment-practices-of-the-corporate-sector/>

<sup>40</sup> Uber, "Able at Uber" Available at: <https://www.uber.com/in/en/about/diversity/able-at-uber/>

<sup>41</sup> "Companies Leading in Disability Inclusion Have Outperformed Peers, Accenture Research Finds", Available at <https://newsroom.accenture.com/news/companies-leading-in-disability-inclusion-have-outperformed-peers-accenture-research-finds.htm> (Last Accessed, August 27, 2021)

Lemon Tree Hotels having been incorporated in 2004, employs over 4000 people in approximately 40 hotels in 24 cities of the country. This amounts to 22% of their working staff and they aim to increase it to 40% by the year 2025. A pattern that can be observed is that major food chain brands are furthering the employability of differently abled. And for the purpose of the same, they have formulated internal working systems which have benefited and enabled smoother working processes. Various home-grown businesses and brands have also adopted similar models which have fostered employability for the differently abled.<sup>42</sup>

KFC, a famous fast-food brand having around 300 stores in 80 cities of the country makes sure that 70% of their employee are speech or hearing impaired, therefore are trained in sign language communication. Aegis Ltd, A Business Process Outsourcing company with 45000 employees in 30 centres has 600 employees who are people with disabilities. Such disabilities include, Visual impairment, locomotor disability, epilepsy and albinism. Google, one of the biggest employers presently, has formulated specific policies for inclusion of differently abled people. The policies are specifically broad, ensuring that equality is achieved, without any distinction between the form of disability all of which has been outlined in their “Equal Employment opportunity- The Law Policy”.

While Companies are playing their part in ensuring that there are inclusive policies that are enacted and implemented, a major share in ensuring the eradication of the stigma around disability is credited to various NGO’s. The work carried out by NGO’s has been in the form of Community based Rehabilitation Services, awareness programmes and campaigns, large-scale governmental incentive schemes, along with vocational training programmes. The RCI has played a pivotal role in ensuring education amongst the officers of the Primary Healthcare Centre (PHC), the impact of the same has been observed that around 18,657 officers were successfully sensitised.<sup>43</sup>

The Public sector undertakings like Bharat Petroleum, have showcased exceptional intake of PwD’s, with majority of management tasks being awarded to them. Additionally, through Exchange programmes, launched by the Ministry of Labour, PwD’s are being connected to training/apprenticeship programmes, which help in securing gainful employment. It has been

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<sup>42</sup> “12 Indian Businesses That Hire People With Disabilities”, Available at: <https://untoldstory.in/inspiration/indian-business-that-hire-people-with-disabilities/> (Last Accessed August 25, 2021)

<sup>43</sup> *Supra* Note 10 (World report)



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noticed that an holistic approach, with contributory efforts from all the included parties shall go a long way in creating a better platform facilitating higher employment ratios.<sup>44</sup>

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<sup>44</sup> *Supra* Note 17

## ANALYSIS AND CONCLUSION

PwD's in India have gone through centuries of oppression and prejudice, with no support from the society or the government for the longest time. By the way of this paper, the authors aimed to provide a primer to the existing laws, judicial pronouncements and the practical cases where upliftment of PwD's, was being greatly observed. Since one of the most helpful aid in empowerment is providing opportunities for employment, the scope of the same was explored in this paper. A major issue in the existent systems is with respect to the lack of awareness amongst the general people, specifically regarding the difficulties faced by PwD's. A major wave of sensitisation is required to be carried out in order to ensure fostering an inclusive environment.

As can be seen through the case studies, it takes efforts from all the stakeholders and contributors to effectively realise the responsibility of empowerment. While the government is undertaking welfare policies for the same, companies are incorporating policies of inclusiveness in their company guidelines. A major support being provided to them is by the NGO's who extend their activities at the grassroot level, thereby creating a chain of effective and efficient services.

All the above-mentioned activities pertain to the practical application, whereas, that the present rules and regulation in the country are insufficient to cater to the growing and dynamic population of the disabled. The acts and statutes being extremely limited in scope need more judicial interpretation, the existing rulings merely lay foundation, yet there exists a need for holistic policies with targeted action. Additionally, with clear demarcation of the definition of Disability, there is a form of exclusion that is seen, with the international law recognising various other forms of disabilities as well.

A final parting thought here is with respect to the required increase in awareness, understanding, and nation-wide policies for mental health issues. The issue does not necessarily pertain to any specific class, but has wreaked havoc in the lives of a majority, and yet the issues go unrecognised or are snubbed by the society. Taking into account the fast-paced lifestyle and the increased stress mounting on people, active sensitisation programmes for the same are necessary. An elaborate understanding of the various form of mental health issues, steps for diagnosis, measures for prevention and national helplines for the same have to be established. Therefore, in order to serve justice to the people it is necessary that reforms be bought into the legal system and better implementation of the same be sought.